

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Dean TAN et al. Serial No.: 09/872,234 Filed: May 31, 2001	Confirmation No.: 2418 Examiner: William H. Wood Group Art Unit No.: 2193
---	---

For: **TECHNIQUES FOR AUTOMATICALLY INSTALLING AND CONFIGURING
DATABASE APPLICATIONS**

Mail Stop Appeal Brief – Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed on June 18, 2008.

I. REAL PARTY IN INTEREST

Oracle International Corporation is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-21, 23-43 and 45-48 are pending in the application, and are the subject of this appeal. Claims 1-21, 23-43 and 45-48 were finally rejected. Claims 22, 44 and 49-50 were canceled during prosecution.

IV. STATUS OF AMENDMENTS

No amendments were filed after the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application contains independent claims 1, 21, 23, 43 and 45-46. The independent claims are directed generally to installing and configuring an application on a device on a network.

Claim 1 recites (with added reference annotations in parenthesis) a method for installing and configuring an application on a device on a network (page 92, lines 2-25; FIG. 7), the method comprising the steps of:

sending, from the device to a server on the network (page 93, lines 4-17; FIG. 7,

element 735), a request that

(a) requests a database application from the server (page 93, lines 4-5; FIG. 7,

element 735), and

(b) includes resource information that indicates resources that are available on

the device (page 93, lines 5-25; FIG. 7, element 735);

downloading, from the server, a customized value for a configuration parameter to be

used by the database application when the database application is executed on

the device (page 94, lines 1-12; FIG. 7, element 740; page 94, lines 23-25;

FIG. 7, element 740), to determine how the database application allocates

resources on the device (page 94, lines 6-12; FIG. 7, element 740), wherein the customized value was determined by the server based on the resource information (page 94, lines 5-6; FIG. 7, element 740; page 93, lines 11-17; FIG. 7, element 735);

downloading the database application to the device (page 94, lines 1-5; FIG. 7, element 740);

installing the database application on the device (page 94, lines 14-19; FIG. 7, element 735); and

configuring the database application to include the customized value for the configuration parameter (page 94, lines 13-23; FIG. 7, elements 740, 750 and 760).

Claim 21 recites (with added reference annotations in parenthesis) a method for installing and configuring an application on a device on a network (page 92, lines 2-25; FIG. 7), the method comprising the steps of:

receiving, at a server on the network from the device (page 93, lines 4-17; FIG. 7, element 735), a request that (a) requests said application from the server (page 93, lines 4-5; FIG. 7, element 735), and (b) includes resource information that indicates resources that are available on the device (page 93, lines 5-25; FIG. 7, element 735);

determining a customized value for a configuration parameter based on the resource information (page 93, lines 5-25; FIG. 7, element 735), wherein the configuration parameter is to be used by the application (page 94, lines 1-12; FIG. 7, element 740), when the database application is executed on the device

(page 94, lines 1-12; FIG. 7, element 740), to determine how the database application allocates resources on the device (page 94, lines 1-12; FIG. 7, element 740);

sending to the device the initial customized value for the configuration parameter (page 94, lines 1-12; FIG. 7, element 740); and

sending to the device data causing the application to be (a) downloaded to the device (page 94, lines 1-3; FIG. 7, element 740), (b) installed on the device (page 94, lines 13-19; FIG. 7, element 740), and (c) configured to include the customized value for the configuration parameter (page 94, lines 1-12; FIG. 7, element 740).

Claim 23 recites (with added reference annotations in parenthesis) a computer-readable medium carrying one or more sequences of instructions for installing and configuring an application on a device on a network (page 92, lines 1-5; FIG. 7, element 740), wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to perform the steps of:

sending, from the device to a server on the network (page 93, lines 4-17; FIG. 7, element 735), a request that (a) requests a database application from the server (page 93, lines 4-5; FIG. 7, element 735), and (b) includes resource information that indicates resources that are available on the device (page 93, lines 5-25; FIG. 7, element 735);

downloading, from the server, a customized value for a configuration parameter to be used by the database application, when the database application is executed on

the device (page 94, lines 1-12; FIG. 7, element 740; page 94, lines 23-25; FIG. 7, element 740), to determine how the database application allocates resources on the device (page 94, lines 6-12; FIG. 7, element 740), wherein the customized value was determined by the server based on the resource information (page 94, lines 5-6; FIG. 7, element 740; page 93, lines 11-17; FIG. 7, element 735);

downloading the database application to the device (page 94, lines 1-5; FIG. 7, element 740);

installing the database application on the device (page 94, lines 14-19; FIG. 7, element 735); and

configuring the database application to include the customized value for the configuration parameter (page 94, lines 13-23; FIG. 7, elements 740, 750 and 760).

Claim 43 recites (with added reference annotations in parenthesis) a computer-readable medium carrying one or more sequences of instructions for installing and configuring an application on a device on a network (page 92, lines 2-25; FIG. 7), wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to perform the steps of:

receiving, at a server on the network from the device (page 93, lines 4-17; FIG. 7, element 735), a request that (a) requests said application from the server (page 93, lines 4-5; FIG. 7, element 735), and (b) includes resource information that indicates resources that are available on the device (page 93, lines 5-25; FIG.

7, element 735);

determining a customized value for a configuration parameter based on the resource information (page 93, lines 5-25; FIG. 7, element 735), wherein the configuration parameter is to be used by the application (page 94, lines 1-12; FIG. 7, element 740), when the database application is executed on the device (page 94, lines 1-12; FIG. 7, element 740), to determine how the database application allocates resources on the device (page 94, lines 1-12; FIG. 7, element 740);

sending to the device the initial customized value for the configuration parameter (page 94, lines 1-12; FIG. 7, element 740); and

sending to the device data causing the application to be (a) downloaded to the device (page 94, lines 1-3; FIG. 7, element 740), (b) installed on the device (page 94, lines 13-19; FIG. 7, element 740), and (c) configured to include the customized value for the configuration parameter (page 94, lines 1-12; FIG. 7, element 740).

Claim 45 recites (with added reference annotations in parenthesis) a machine-implemented method (page 92, lines 2-25; FIG. 7), comprising the steps of:

receiving, at an appliance (page 94, lines 1-5; FIG. 7, element 740), a document that includes textual elements (page 94, lines 13-19; FIG. 7, element 740) that specify (a) steps for installing and configuring an application on the appliance (page 94, lines 13-19; FIG. 7, element 740), and (b) a customized parameter value to use when installing and configuring the application on the appliance (page 94, lines 3-12; FIG. 7, element 740);

after receiving the document, translating the textual elements to commands (page 94, lines 15-19; FIG. 7, element 740); and

the appliance executing the commands to perform said steps to install the application on the appliance (page 94, lines 15-19; FIG. 7, element 740) and to configure the application to include the customized parameter value (page 94, lines 13-23; FIG. 7, element 740); wherein:

the customized parameter value is determined by a server (page 93, lines 4-17; FIG. 7, element 735), based on resource information that indicates resources that (a) are available on the appliance (page 93, lines 5-17; FIG. 7, element 735) and (b) is sent by the appliance to the server (page 93, lines 4-8; FIG. 7, element 735), and

the customized parameter value (page 93, lines 10-13; FIG. 7, element 735) is usable by the application (page 94, lines 1-6; FIG. 7, element 740), when the application is executed on the appliance (page 94, lines 1-6; FIG. 7, element 740), to determine how the application allocates resources on the appliance (page 94, lines 1-12; FIG. 7, element 740).

Claim 46 recites (with added reference annotations in parenthesis) a machine-readable medium carrying one or more sequences of instructions (page 92, lines 2-25; FIG. 7), wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to perform the steps of:

receiving, at an appliance (page 94, lines 1-5; FIG. 7, element 740), a document that includes textual elements (page 94, lines 13-19; FIG. 7, element 740) that specify (a) steps for installing and configuring an application on the appliance (page 94, lines 13-19; FIG. 7, element 740), and (b) a customized parameter value to use when installing and configuring the application on the appliance

(page 94, lines 3-12; FIG. 7, element 740);
after receiving the document, translating the textual elements to commands (page 94, lines 15-19; FIG. 7, element 740); and
the appliance executing the commands to perform said steps to install the application on the appliance (page 94, lines 15-19; FIG. 7, element 740) and to configure the application to include the customized parameter value (page 94, lines 13-23; FIG. 7, element 740); wherein:
the customized parameter value is determined by a server (page 93, lines 4-17; FIG. 7, element 735), based on resource information that indicates resources that (a) are available on the appliance (page 93, lines 5-17; FIG. 7, element 735) and (b) is sent by the appliance to the server (page 93, lines 4-8; FIG. 7, element 735), and
the customized parameter value (page 93, lines 10-13; FIG. 7, element 735) is usable by the application (page 94, lines 1-6; FIG. 7, element 740), when the application is executed on the appliance (page 94, lines 1-6; FIG. 7, element 740), to determine how the application allocates resources on the appliance (page 94, lines 1-12; FIG. 7, element 740).

Limitations of the independent claims are argued herein. Further, the limitations of dependent Claims 11-12 are argued separately from the limitations of the independent claims from which they depend.

Claim 11 recites (with added reference annotations in parenthesis) the method of claim 1, wherein the resource information includes data indicating at least one of a consumable resource (page 93, lines 10-13; FIG. 7, element 735; page 94, lines 5-7; page 24, lines 9-13) and an application already installed on the device (page 93, line 9; FIG. 7, element 735).

Claim 12 recites (with added reference annotations in parenthesis) the method of claim 11, wherein the data indicating the consumable resource comprises at least one of an amount of storage space, a number of licensed users, a maximum processor usage rate, and a maximum transaction rate (page 24, lines 9-13; page 24, lines 18-23; page 25, lines 3-9; page 32, lines 10-14; page 35, lines 15-16; page 93, lines 10-13; FIG. 7, element 735).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-21, 23-43 and 47-48 have been rejected under 35 USC 103(a) as allegedly unpatentable over U.S. Patent Number 5,933,647 issued to Aronberg et al. (hereafter "Aronberg") in view of U.S. Patent Number 6,718,358 issued to Bigus et al. (hereafter "Bigus").

2. Claims 45-46 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Aronberg et al. in view of U.S. Patent Number 5,555,416 issued to Owens et al. ("Owens").

VII. ARGUMENT

A. INTRODUCTION

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art [...]. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). See also KSR,

127 S.Ct. at 1734, 82 USPQ2d at 1391. “If a court, or patent examiner, conducts this analysis and concludes the claimed subject matter was obvious, the claim is invalid under §103.”

In the present matter, the Examiner has made clearly erroneous factual findings regarding the scope and content of the prior art, and in particular, what certain cited prior art references teach. Therefore, the Examiner’s analysis, and the rejection based thereon, are invalid.

With respect to the present application, it is respectfully submitted that Aronberg and Bigus, considered alone or in combination, do not teach or suggest all the limitations of Claims 1-21, 23-43 and 47-48. It is further submitted that the Examiner has not proffered a sufficient factual basis during the prosecution of the present application to support the rejection of claims 45-46 under 35 U.S.C. § 103 as being unpatentable over Aronberg in view of Owens.

B. THE REJECTIONS OF CLAIMS 1-21, 23-43 AND 47-48 UNDER 35 USC 103(A) AS BEING UNPATENTABLE OVER ARONBERG, IN FURTHER VIEW OF BIGUS ARE BASED ON A CLEAR TECHNICAL ERROR

CLAIMS 1-21, 23-43 AND 47-48

The claims’ rejection is based on a clear technical error. The technical error is that the Advisory Action is confusing the **installation** of software with the **tuning** of software. This error is clearly evident from the statement in the Advisory Action that “Bigus discloses **installing** software on a system based upon gathered information from that system (column 1, lines 38-49),” and the fact that in column 1, lines 38-49, Bigus describes:

The concept of “tuning” seeks to improve service levels by adjusting existing resource allocations. Doing so requires access to metrics and to the controls that determine resource allocations. In general, there are three classes of metrics: (1) “configuration metrics” that describe performance related features of the target that are not changed by adjusting tuning controls, such as line speeds, processor speeds, and memory sizes; (2) “workload metrics” that characterize the load on the target, such as arrival rates and service times; and (3) “service level metrics” that characterize the performance delivered, such as response times, queue lengths, and throughputs.

Thus, the Advisory Action erroneously treats Bigus’ description of what is clearly **tuning** of already installed software as if it were “**installing**” software on a system based upon gathered information from that system.” This error has resulted in faulty rejections.

Therefore, the Examiner has made a clear technical error regarding the scope and content of the prior art. Thus, the Examiner’s analysis and the rejection based thereon are invalid. Reconsideration and allowance of claims 1-21, 23-43 and 47-48 is respectfully requested.

C. THE REJECTIONS OF CLAIMS 1-21, 23-43 AND 47-48 UNDER 35 USC 103(A) AS BEING UNPATENTABLE OVER ARONBERG, IN FURTHER VIEW OF BIGUS ARE BASED ON A CLEAR FACTUAL ERROR

The rejections are also based on a clear factual error. The Advisory Action alleges that Aronberg in view of Bigus teaches the limitations of Claims 1-21 and 23-43. This is incorrect.

INDEPENDENT CLAIM 1

Neither prior art reference discloses, or in any way suggests “**sending, from the device to a server [...] a request that [...] includes resource information that indicates resources that are available on the device; downloading, from the server, a customized value for a configuration parameter to be used by the database application** when the database application is executed on the device, **to determine how the database application allocates resources on the device, wherein the customized value was determined by the server based on the resource information; [...] installing the database application** on the device; and **configuring the database application** to include the **customized value for the configuration parameter,**” recited in claim 1.

Bigus is about tuning of already installed software (Bigus: column 1, lines 38-49), not about installing software, as claimed. Further, the tuning performed in Bigus is performed based on post-installation metrics (metrics generated by monitoring the system while running the already-installed software) (Bigus: column 1, lines 37-64), not based on a customized value parameter determined by the server based on the resource information sent by the device to the server before the installation, as claimed.

Aronberg is about installing software on a device. However, in Aronberg, the software is not installed on the device with “a customized value for the configuration parameter [...] that is determined by the server based on the resource information sent by the device,” as claimed. To the extent that the installations in Aronberg are customized in any way, they are customized based on how the user has manually specified the installation type (i.e. a complete installation, a minimum installation, a typical installation or a workstation installation) of already downloaded software. This is described in Aronberg’s column 5, lines 24-48:

Referring now to FIG. 4 there is shown a dialog box **401**,
accessed from the main window in FIG. 3, from which
actions by the user are selected. As shown, the application
Microsoft Office is selected with a typical install option, and
various actions which the user may select by clicking the
mouse controlled cursor on the particular action desired. As
noted before, actions are instructions that will be executed
by the agent based workstation, such as **103** or **104**, when the
agent determines it meets the conditions set by the admin-
istrator from the console and pulls down the application
from the file server **102**. After the profiler has created the
predetermined set of actions, the user can add more actions
to customize the download of the application to the agents.
The user may add a new action to an action set by selecting
one from the list in the dialog box **401**.

Referring now to FIG. 5 there is shown a dialog box **501**,
accessed from the window in FIG. 3, from which an install
type **502** is selected by the user. As shown for the McAfee
Virus application, double clicking on the typical selection
503 prompts the present invention to display the dialog box
501. The install types are related to different installation
types available with the particular application, e.g.,
Microsoft Office has install options depending on user
hardware capacity such as hard drive storage or RAM
capacity.

In Aronberg, how the software is configured is determined by the user, not the server. Further, the user's personal preferences expressly determine the configuration. The configuration is not in any way determined based on information specifically received by the server from the client about what resources are available at the client site.

Aronberg's FIGS. 4-5 clearly illustrate that Aronberg's user selects "Install Type" from one of the menus to define the desired type of installation, but never gives the server an opportunity to customize the installation for the user. Aronberg's user or appliance does not send to the server information about the user or appliance's resources and does not delegate control of the customization to the server. Hence, installations according to Aronberg's scheme are prone to user's mistakes.

Thus, in Aronberg, the device does not "send resource information to the server," as

claimed. Further, in Aronberg, the server does not receive “device’s resource information to be used to customize values for the configuration parameters,” and the server does not send to the device “customized values for the configuration parameters,” as claimed. Moreover, in Aronberg, the device does not “download from the server a customized value for the configuration parameter, determined by the server based on the resource information sent by the device,” as claimed. Finally, in Aronberg, the database is not “configured to include the customized value for the configuration parameter,” as claimed.

Therefore, Aronberg and Bigus, individually or in combination, fail to teach **“sending, from the device to a server [...] a request that [...] includes resource information that indicates resources that are available on the device; downloading, from the server, a customized value for a configuration parameter to be used by the database application when the database application is executed on the device, to determine how the database application allocates resources on the device, wherein the customized value was determined by the server based on the resource information; [...] installing the database application on the device; and configuring the database application to include the customized value for the configuration parameter,”** recited in claim 1.

Furthermore, it does not make sense to combine Aronberg with Bigus for the purpose of rejecting Claim 1. It is unclear how Aronberg could be modified with the teaching of Bigus, since Bigus relies upon performance data to determine the tuning settings, which means that the software is already installed and operating, while in Aronberg, the software is not yet installed, and thus, there is no performance data for the software to be collected from a target as in Bigus.

Even if the Aronberg technique were used to install software, and the Bigus technique were used to optimize the software after the installed software had been running for a while,

many of the express limitations of Claim 1 would still remain unsatisfied. The current Office Action has not addressed the above argument.

Therefore, the Examiner has made a clear technical error and clearly erroneous factual findings regarding the scope and content of the prior art. Thus, the Examiner's analysis and the rejection based thereon are invalid. Reconsideration and allowance of claim 1 is respectfully requested.

INDEPENDENT CLAIMS 21, 23 AND 43

Claims 21, 23 and 43 recites features similar to those in Claim 1. Therefore, for the reasons discussed in Claim 1, reconsideration and withdrawal of the rejections of Claims 21, 23 and 43 is respectfully requested.

DEPENDENT CLAIMS 11-12

It is respectfully submitted that Claims 11-12 are patentable over Aronberg in view of Bigus, because neither Aronberg nor Bigus, individually or in combination, teach or suggest **“wherein the resource information, sent from the device to a server and indicating resources that are available on the device, includes data indicating at least one of a consumable resource [...], wherein the data indicating the consumable resource comprises at least one of [...] number of licensed users, a maximum processor usage rate, and a maximum transaction rate,”** as claimed.

As explained above, Bigus is about tuning of already installed software (Bigus: column 1, lines 38-49), and not about sending resource information to the server before the installation takes place, as claimed. Further, the tuning performed in Bigus is performed based on post-installation metrics (Bigus: column 1, lines 37-64), not based on resource

information sent by the device to the server before the installation, as claimed.

Aronberg's appliance does not send resource information to the server to indicate resources that are available on the device and certainly Aronberg's appliance does not send to the server "data that indicate the consumable resource, such as number of licensed users, a maximum processor usage rate, or maximum transaction rate," as claimed. Aronberg never sends data indicating the consumable resources on the appliance. Aronberg discusses Microsoft Office that has install options depending on user hardware capacity such as hard drive storage or RAM capacity, but never does Aronberg teach or suggest that information about, for example, "the number of licensed users, a maximum processor usage rate or a maximum transaction rate" is ever sent from the appliance to the server.

Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

REMAINING DEPENDENT CLAIMS

The pending claims not discussed so far are dependant claims that depend on an independent claim 1 that is discussed above. Because each of the dependant claims includes the limitations of claims upon which they depend, the dependant claims are patentable for at least those reasons the claims upon which the dependant claims depend are patentable. Removal of the rejections with respect to the dependant claims and allowance of the dependant claims is respectfully requested. In addition, the dependant claims introduce additional limitations that independently render them patentable.

The Appellants respectfully note that 35 U.S.C. § 132 requires in connection with a rejection that the Director "notify the applicant thereof, stating the reasons for such rejection." Notably, this section is violated if the rejection "is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection."

(*Chester v. Miller*, 15 USPQ2d 1333 (Fed. Cir. 1990)). This policy is captured in the Manual of Patent Examining Procedure (MPEP). For example, MPEP § 706 states that “[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that applicant has the opportunity to provide evidence of patentability and otherwise respond completely at the earliest opportunity.” Furthermore, MPEP § 706.020 indicates that: “[i]t is important for an Examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply.”

The Appellants respectfully submit that for at least these reasons the rejection of Claims 1-21, 23-43 and 47-48 should be reversed.

D. THE REJECTIONS OF CLAIMS 45-46 UNDER 35 USC 103(A) AS BEING UNPATENTABLE OVER ARONBERG, IN FURTHER VIEW OF OWENS ARE BASED ON A CLEAR FACTUAL ERROR

It is respectfully submitted that claims 45-46 are patentable over Aronberg in view of Owens, because, considered alone or in combination, the cited references do not teach or suggest all the limitations recited in claims 45-46. For example, claim 45 recites a method comprising the steps wherein: 1) **“resource information that indicates resources that (a) are available on the appliance, and (b) is sent by the appliance to the server,”** 2) **“customized parameter value is determined by a server, based on resource information,”** and 3) **“configure the application to include the customized parameter value.”** Aronberg and Owens, alone or in combination, fail to teach the above features recited in claim 45.

As it was pointed out in the discussion of Claim 1, Aronberg fails to disclose or suggest; 1) **“resource information that indicates resources that (a) are available on the**

appliance, and (b) is sent by the appliance to the server,” 2) “customized parameter value is determined by a server, based on resource information,” and 3) “configure the application to include the customized parameter value,” all also recited in Claim 45.

Owens does not disclose the above features either. In Owens, a software installation on a target computer does not require the target computer to send any resource information to the server. In Owens, the software installation on the target computer is performed by a boot device, an install media and a storage device residing on a computer network. (Column 2, lines 2-23). The storage device contains a collection of installation files already customized for the target computer. (Column 2, lines 26-28) The customized collection of installation files comprises a classification rules file, pre-install class scripts, install class parameters files, and post-installation class script files. (Column 2, lines 28-31) Together, these files customize and configure the software installation on the target computer. (Column 2, lines 32-34) Owens intentionally maintains the separation of the customized installation files from the server to provide flexibility in the installation process, and allow installation procedures to be broken down into separate scripts. In Owens, the non-customized scripts are “re-used” for the whole group of computers, whereas the customized scripts are only used for a particular target computer. (Column 3, lines 12-16).

However, Owens’ target computer (which has been equated to **“an appliance”**) does not send its **“resource information” to the server** to indicate **its resources** before new software is installed on it. In fact, Owens’ target computer never specifically contacts the server to request an installation of new software. Instead, during a booting routine, the target computer determines whether the network system administrator has decided that new software needs to be installed on the target computer, and checks whether any new software has been already downloaded onto installation media. Subsequently, continuing with the booting process, the target computer invokes the collection of the installation files and rules

that are used to customize the software installation on the target computer. (Fig. 3, column 6, lines 65+; column 7, lines 1-18) Clearly then, to initiate and perform a software installation, Owens' target computer ("**an appliance**") does not send to the server any **resource information that indicates the target computer's resources**, and does not receive from the server a "**customized parameter value**" **determined by a server based on the target computer's resource information** to proceed with the installation.

Therefore, neither Aronberg nor Owens discloses 1) "**resource information that indicates resources that (a) are available on the appliance, and (b) is sent by the appliance to the server,**" 2) "**customized parameter value is determined by a server, based on resource information,**" and 3) "**configure the application to include the customized parameter value,**" disclosed in claim 45. Hence, the Examiner has made clearly erroneous factual findings regarding the scope and content of the prior art. Thus, the Examiner's analysis and the rejection based thereon are invalid. Reconsideration and allowance of claim 1 is respectfully requested.

The pending claims not discussed so far are dependant claims that depend on an independent claim 1 that is discussed above. Because each of the dependant claims includes the limitations of claims upon which they depend, the dependant claims are patentable for at least those reasons the claims upon which the dependant claims depend are patentable. Removal of the rejections with respect to the dependant claims and allowance of the dependant claims is respectfully requested. In addition, the dependant claims introduce additional limitations that independently render them patentable.

The Appellants respectfully submit that for at least these reasons the rejection of Claims 1, 3, 5 – 9, 12, 14 and 16 – 20 should be reversed.

VIII. CONCLUSION AND PRAYER FOR RELIEF

Based on the foregoing, it is respectfully submitted that the rejections of Claims 1-21, 23-43 and 45-48 lack the requisite factual and legal bases. Appellants respectfully request that the Honorable Board reverse the rejections of claims 1-21, 23-43 and 45-48.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: November 10, 2008

/MalgorzataAKulczycka#50496/

Malgorzata A. Kulczycka

Reg. No. 50,496

2055 Gateway Place, Suite 550
San Jose, California 95110-1089
Telephone: (408) 414-1228
Facsimile: (408) 414-1076

CLAIMS APPENDIX

1. A method for installing and configuring an application on a device on a network, the method comprising the steps of:
sending, from the device to a server on the network, a request that
 - (a) requests a database application from the server, and
 - (b) includes resource information that indicates resources that are available on the device;downloading, from the server, a customized value for a configuration parameter to be used by the database application when the database application is executed on the device, to determine how the database application allocates resources on the device, wherein the customized value was determined by the server based on the resource information;
downloading the database application to the device;
installing the database application on the device; and
configuring the database application to include the customized value for the configuration parameter.
2. The method of Claim 1 further comprising the step of monitoring one or more logs of actual use of the resources on the device.
3. The method of claim 2, further comprising, after the database application has been installed, tuning the configuration parameter based on the one or more logs of actual use of the resources on the device.
4. The method of claim 1, wherein:

the method further comprises, after sending the request for the database application to the server, receiving at the device a network address of a source for the database application; and

the step of downloading the database application to the device comprises downloading the database application to the device from the source.

5. The method of claim 4 wherein:

the server is a first server; and

the source is a second server that is distinct from the first server.

6. The method of claim 1, wherein the device is a database appliance having database software and non-database software tailored to the needs of the database software.

7. The method of claim 1, wherein:

the server is a community server used to install the database application on a plurality of devices that includes the device; and

the community server sends to each device of said plurality of devices an individual customized value for the configuration parameter based on the resources that are available on said each device.

8. The method of claim 4, wherein the source is a community server used to install the database application on a plurality of devices and the network is the Internet.

9. The method of claim 1, wherein the server is a platform at an Internet database service provider.

10. The method of claim 4, wherein the source is a platform at an Internet database service provider.

11. The method of claim 1, wherein the resource information includes data indicating at least one of a consumable resource and an application already installed on the device.
12. The method of claim 11, wherein the data indicating the consumable resource comprises at least one of an amount of storage space, a number of licensed users, a maximum processor usage rate, and a maximum transaction rate.
13. The method of claim 1, wherein:

the device is a database appliance having database software and non-database software tailored to the needs of the database software; and

the resource information includes data identifying a type of the database appliance.
14. The method of claim 1, wherein the configuration parameter is at least one of a size for a shared global area of memory for the database application, a size for a private cache memory, a size for a tablespace, and a size of a data block.
15. The method of claim 3, wherein the logs of actual use include data indicating at least one of a number of disk reads and a number of disk writes.
16. The method of claim 1, wherein the request is a first request, and the method further comprises:

sending, from the device to the server, a second request for database applications that are available to be downloaded to the device; and

receiving from the server data indicating one or more database applications that are available to be downloaded to the device.
17. The method of claim 1, further comprising:

sending to a user data indicating one or more database applications; and

receiving input from the user indicating a particular database application that the user has selected from the one or more database applications.

18. The method of claim 17, wherein:

the network is the Internet; and

the data indicating the one or more database applications is sent from an internet database service provider system that manages the device.

19. The method of claim 1, wherein the database application is configured to interact with a database server device distinct from the device.

20. The method of claim 19, wherein the device and the database server device are managed by an internet database service provider system.

21. A method for installing and configuring an application on a device on a network, the method comprising the steps of:

receiving, at a server on the network from the device, a request that (a) requests said application from the server, and (b) includes resource information that indicates resources that are available on the device;

determining a customized value for a configuration parameter based on the resource information, wherein the configuration parameter is to be used by the application, when the database application is executed on the device, to determine how the database application allocates resources on the device;

sending to the device the initial customized value for the configuration parameter; and

sending to the device data causing the application to be (a) downloaded to the device, (b) installed on the device, and (c) configured to include the customized value for the configuration parameter.

22. (Cancelled).

23. A computer-readable medium carrying one or more sequences of instructions for installing and configuring an application on a device on a network, wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to perform the steps of:

sending, from the device to a server on the network, a request that (a) requests a database application from the server, and (b) includes resource information that indicates resources that are available on the device;

downloading, from the server, a customized value for a configuration parameter to be used by the database application, when the database application is executed on the device, to determine how the database application allocates resources on the device, wherein the customized value was determined by the server based on the resource information;

downloading the database application to the device;

installing the database application on the device; and

configuring the database application to include the customized value for the configuration parameter.

24. The computer-readable medium of Claim 23, wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to further perform the step of monitoring one or more logs of actual use of the resources on the device.

25. The computer-readable medium of claim 24, wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to further perform the step of tuning the configuration parameter based on the one or more logs of actual use of the resources on the device, after the database application has been installed.
26. The computer-readable medium of claim 23, wherein:
execution of the one or more sequences of instructions by one or more processors
causes the one or more processors to further perform the step of receiving at
the device a network address of a source for the database application, after
sending the request for the database application to the server; and
the step of downloading the database application to the device comprises
downloading the database application to the device from the source.
27. The computer-readable medium of claim 26 wherein:
the server is a first server; and
the source is a second server that is distinct from the first server.
28. The computer-readable medium of claim 23, wherein the device is a database appliance having database software and non-database software tailored to the needs of the database software.
29. The computer-readable medium of claim 23, wherein:
the server is a community server used to install the database application on a plurality
of devices that includes the device; and
the community server sends to each device of said plurality of devices an individual
customized value for the configuration parameter based on the resources that

are available on said each device.

30. The computer-readable medium of claim 26, wherein the source is a community server used to install the database application on a plurality of devices and the network is the Internet.
31. The computer-readable medium of claim 23, wherein the server is a platform at an Internet database service provider.
32. The computer-readable medium of claim 26, wherein the source is a platform at an Internet database service provider.
33. The computer-readable medium of claim 23, wherein the resource information includes data indicating at least one of a consumable resource and an application already installed on the device.
34. The computer-readable medium of claim 33, wherein the data indicating the consumable resource comprises at least one of an amount of storage space, a number of licensed users, a maximum processor usage rate, and a maximum transaction rate.
35. The computer-readable medium of claim 23, wherein:

the device is a database appliance having database software and non-database software tailored to the needs of the database software; and

the resource information includes data identifying a type of the database appliance.
36. The computer-readable medium of claim 23, wherein the configuration parameter is at least one of a size for a shared global area of memory for the database application, a size for a private cache memory, a size for a tablespace, and a size of a data block.

37. The computer-readable medium of claim 25, wherein the logs of actual use include data indicating at least one of a number of disk reads and a number of disk writes.
38. The computer-readable medium of claim 23, wherein the request is a first request, and wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to further perform the steps of:
- sending, from the device to the server, a second request for database applications that are available to be downloaded to the device; and
- receiving from the server data indicating one or more database applications that are available to be downloaded to the device.
39. The computer-readable medium of claim 23, wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to further perform the steps of:
- sending to a user data indicating one or more database applications; and
- receiving input from the user indicating a particular database application that the user has selected from the one or more database applications.
40. The computer-readable medium of claim 39, wherein:
- the network is the Internet; and
- the data indicating the one or more database applications is sent from an Internet database service provider system that manages the device.
41. The computer-readable medium of claim 23, wherein the database application is configured to interact with a database server device distinct from the device.
42. The computer-readable medium of claim 41, wherein the device and the database server device are managed by an Internet database service provider system.

43. A computer-readable medium carrying one or more sequences of instructions for installing and configuring an application on a device on a network, wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to perform the steps of:

receiving, at a server on the network from the device, a request that (a) requests said application from the server, and (b) includes resource information that indicates resources that are available on the device;

determining a customized value for a configuration parameter based on the resource information, wherein the configuration parameter is to be used by the application, when the database application is executed on the device, to determine how the database application allocates resources on the device;

sending to the device the initial customized value for the configuration parameter; and

sending to the device data causing the application to be (a) downloaded to the device, (b) installed on the device, and (c) configured to include the customized value for the configuration parameter.

44. (Cancelled).

45. A machine-implemented method, comprising the steps of:

receiving, at an appliance, a document that includes textual elements that specify

(a) steps for installing and configuring an application on the appliance, and
(b) a customized parameter value to use when installing and configuring the application on the appliance;

after receiving the document, translating the textual elements to commands; and

the appliance executing the commands to perform said steps to install the application on the appliance and to configure the application to include the customized parameter value; wherein:

the customized parameter value is determined by a server, based on resource information that indicates resources that (a) are available on the appliance and (b) is sent by the appliance to the server, and the customized parameter value is usable by the application, when the application is executed on the appliance, to determine how the application allocates resources on the appliance.

46. A machine-readable medium carrying one or more sequences of instructions, wherein execution of the one or more sequences of instructions by one or more processors causes the one or more processors to perform the steps of:

receiving, at an appliance, a document that includes textual elements that specify

- (a) steps for installing and configuring an application on the appliance, and
- (b) a customized parameter value to use when installing and configuring the application on the appliance; and

after receiving the document, translating the textual elements to commands; and

the appliance executing the commands to perform said steps to install the application on the appliance and to configure the application to include the customized parameter value; wherein:

the customized parameter value is determined by a server, based on resource information that indicates resources that (a) are available on the appliance and (b) is sent by the appliance to the server, and the customized parameter value is usable by the application, when the application is executed on the appliance, to determine how the application allocates resources on the appliance.

47. The method of Claim 21, wherein the application is a database application.

48. The machine-readable medium of Claim 43, wherein the application is a database

application.

49. (Cancelled).

50. (Cancelled).

EVIDENCE APPENDIX

No evidence has been submitted under 37 CFR 1.130, 1.131, or 1.132. No other evidence has been entered by the examiner and relied upon by Appellant in the appeal. Therefore, no copies of any evidence are deemed necessary.

RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by any court or the Board in any proceeding identified in the Related Appeals and Interferences section of the brief. Therefore, no copies of any decisions are deemed to be necessary.